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34678	7590	09/21/2004	EXAMINER	
NORMAN E. LEHRER, P.C. 1205 NORTH KINGS HIGHWAY CHERRY HILL, NJ 08034			SMALLEY, JAMES N	
			ART UNIT	PAPER NUMBER
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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/041,075
Filing Date: January 09, 2002
Appellant(s): SCHUMACHER, KLAUS

Norman E. Lehrer
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 14 June 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

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(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of claims 1-3 and 5 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof.

See 37 CFR 1.192(c)(7).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

2,131,969	PODEL	10-1938
2,390,561	STAPLES	12-1945

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-3 and 5 are rejected under 35 U.S.C. 103(a) over Podel US 2,131,969 in view of Staples US 2,390,561. This rejection is set forth in a prior Office Action, mailed on 18 June 2003.

(11) Response to Argument

Examiner notes the rejection is based on modifying Podel '969, providing a glass cap in place of the metal cap, as suggested by the teachings of Staples '561. Staples '561 teaches in col. 1, lines 53-55, using glass caps in place of metal caps provides the benefit of, "saving valuable metal and obviating corrosion." The resultant structure is a glass cap threaded to a glass bottle, whereby the cap completely

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surrounds a crown cap applied to the bottle neck. Claims 2-3 and 5 are obviated by further providing the plastic insert of Staples '561. Staples '561 discloses on page 3 of the Specification, lines 46-48, "With a glass container and a glass cap it is of course necessary that a layer of plastic be disposed between the threads," obviating the problem of friction between the threads of the cap and the container, as the Specification of Staples '561 discloses, in the second column of page 1, lines 2-8. The plastic layer is read to be a "liner."

Appellant argues on page 4 of the Appeal Brief that "Podel does not disclose nor render obvious a bottle and external cap made from ceramic." Examiner asserts the rejection stands on the basis that glass is, in fact, a ceramic material, thus meeting the claimed limitation.

Examiner submits a definition for ceramics from *The Condensed Chemical Dictionary, Eighth Edition Copyright © 1971 by Litton Educational Publishings, Inc.* The definition, a copy of which is attached herewith in the Appendix, recites: **"The chief major groups of the ceramics industry are as follows: ... (3) Glass products of all types."** Examiner reads this definition to clearly define all glass products as a subset of the broader group, "ceramics." Thus, the glass cap and glass bottle of Podel '969 modified in view of Staples '561 comprise a "ceramic bottle" and "ceramic exterior cap," as required by the Appellant's claimed invention.

Furthermore, Examiner submits definitions for, "ceramic," and for, "glass," attached herewith in the Appendix, and obtained from the online source, "Dictionary.com," (<http://www.dictionary.com>), based on *The American Heritage® Dictionary of the English Language, Fourth Edition Copyright © 2000 by Houghton Mifflin Company* (here forth, "dictionary").

The dictionary defines ceramic as, **"Any of various hard, brittle, heat-resistant and corrosion-resistant materials made by shaping and then firing a non-metallic mineral, such as clay, at a high temperature."**

The dictionary defines glass as, **"Any of a large class of materials with highly variable mechanical and optical properties that solidify from the molten state without crystallization, are typically made by silicates fusing with boric oxide, aluminum oxide, or phosphorous pentoxide,**

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are generally hard, brittle, and transparent or translucent, and are considered to be supercooled liquids rather than true solids."

Glass, by the definition cited above, is 'hard' and 'brittle.' It is also known to be heat-resistant and corrosion resistant, as glass dishware can resist high temperatures from dish washing, or microwaving, without corroding, and possess corrosion-resistance as exemplified by the longevity of glass windows. Glass further meets the definition for "ceramic," as glass can be shaped and fired (for example by a glass blower), and is a non-metallic mineral, as it is comprised of silicates fused with boric oxide.

The Appellant argues on page 4, 3rd paragraph of the Appeal Brief, "Nor would it be obvious or desirable to make a ketchup bottle from ceramic as it would not be very cost efficient to do such. Also, it would not be very practical to use a ceramic ketchup bottle, ceramic bottles are typically used for decoration. Ketchup bottles are utilitarian and are seldom used as decorative objects." Although Podel '969 teaches the container being used for ketchup, Examiner notes the rejection at issue does not proceed by modifying Podel '969 to form the container of ceramic. Instead, the reference stands alone, as glass is read to be a ceramic. Further, the cost-effectiveness of modifying a ketchup bottle from glass to ceramic is irrelevant to the issue at hand. Were it even to be the issue, one having ordinary skill could modify a glass bottle to form a bottle of ceramic.

Appellant further argues in the last line of page 4 of the Appeal Brief, "Staples does not, however, disclose or suggest a bottle and external cap made from ceramic." Similarly to the Examiner's above reading of the glass bottle disclosed by Podel '969 to be a "ceramic bottle," the glass cap of Staples '561 is also an "external ceramic cap," because glass has been clearly demonstrated to be a type of ceramic.

In the final paragraph of the Appeal Brief, page 5, 1st line, the Appellant states, "Neither would it be obvious to use ceramic instead of glass as suggested by the Examiner" (emphasis added). Examiner asserts that such a contention was never made in the rejection. A review of the rejection, listed as paragraph number '3' in the Final Action mailed 18 June 2003 will show that such an assertion was never made by the Examiner. The Examiner contends the rejection stands on the grounds that glass is a ceramic.

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Finally, Examiner notes the Specification of the instant application discloses on page 6, lines 5-7, "As with the first embodiment, in the second embodiment of the invention, the bottle 112 and cap 118 may be made from glass, ceramic, or any other type of material known and used in the art." The passage clearly equates glass and ceramic as suitable materials from which the bottle and cap can be formed. For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

James Smalley
AU 3727
September 15, 2004

Conferees
Nathan Newhouse, AU 3727 *NN*
Stephen Cronin, AU 3727 *SC*

Norman E. Lehrer
1205 North Kings Highway
Cherry Hill, NJ 08034

Lee Young
9/20/04
LEE YOUNG
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700